IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12726 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRESIDENT OF CHAMUNDA (NARANPURA) SHOPS & FLATS - Petitioner

Versus

TORRENT POWER AEC LTD. THR' CHAIRMAN & 1 - Respondents

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Appearance :

MR AYUB Y SHAIKH for Petitioner.
NOTICE SERVED BY DS for Respondent: 1.
MR RM CHHAYA for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.R.M.Chhaya, learned counsel, waives service of notice on behalf of the respondent No.2. The record shows that though the respondent No.1 is duly served with the notice for final disposal of the petition, it has not appeared through its lawyer nor through its constituted agent, nor has filed affidavit-in-reply controverting the averments made in the petition.

2. By filing this petition under Article 226 of the Constitution, Mr. Pankajbhai Bachubhai Poriya, who is President of the Chamunda (Naranpura) Shops & Flats Cooperative Housing Society Ltd., has prayed to issue a writ of mandamus or any other an appropriate writ or order directing the respondent No.1 i.e. Torrent A.E.C.Ltd., to provide regular permanent electricity connections to the shops and flats constructed by the petitioner. The petitioner has further prayed to direct the respondent No.2 i.e. Ahmedabad Municipal Corporation to grant Building Use Permission to the petitioner to enable the allottees of the shops and flats to use the same.

3. From the contents of Commencement Letter (Rajachitthi) issued by Ahmedabad Municipal Corporation on September 7, 2005, it is evident that Sub Plot No.17 of Final Plot No.387 of T.P.Scheme No.19-Memnagar belonged to Manglaben Chimanlal Pancholi, whose power of attorney holder was Navinchandra Chimanlal Pancholi. During the course of hearing of the petition, the learned counsel for the petitioner has produced Sale Deed dated August 25,2005 entered into between Mr. Navinchandra Chimanlal Pancholi and Mr. Pankajbhai Bachubhai Poriya, who was President of Shri Chamunda (Naranpura) Shops and Flats Cooperative Housing Society Ltd., which indicates that the property in question was sold by Mr.Navinchandra Chimanlal Pancholi to Shri Chamunda (Naranpura) Shops and Flats Co.op.Housing Society Ltd. According to the petitioner, pursuant to the development permission granted by the Ahmedabad Municipal Corporation, the petitioner has constructed shops and flats on the land purchased by the society. After construction of the shops and flats, the petitioner should have obtained Building Use Permission and thereafter

should have applied for electricity connection. However, without obtaining Building Use Permission, the petitioner applied to the respondent No.1 for supply of electricity connection to the shops and flats constructed by the society. The record shows that the said request was turned down by the respondent No.1 on the ground that the petitioner could not produce Building Use Permission. By communication dated June 30, 2006, the General Manger of the respondent No.1 has informed the petitioner that the petitioner should produce either Building Use Permission or conditional order of High Court to enable the respondent No.1 to supply electricity to the shops and flats constructed by the petitioner. Under the circumstances, the petitioner has filed the instant petition and claimed relief to which reference is made earlier.

4. The petition was placed for admission hearing before the Court on July 3, 2006, and after hearing the learned counsel for the petitioner, notice for final disposal of the petition was issued to the respondents, making it returnable on today. As

observed earlier, though the respondent No.1 is duly served, it has not contested the petition.

5. This Court has heard Mr.A.Y.Shaikh, learned counsel for the petitioner, and Mr.R.M.Chhaya, learned counsel for the respondent No.2. Having heard the learned counsels for the parties and considered the documents forming part of the petition, this Court is of the opinion that interest of justice would be served, if following directions are issued :

(1) The petitioner will approach the Ahmedabad Municipal Corporation for obtaining Building Use Permission within thirty days from today with a proper application/form/format and by paying requisite fee, if any.

(2) The Ahmedabad Municipal Corporation is directed to take decision on the application, which may be submitted by the petitioner, within four months from the date of receipt of the same.

(3) The petitioner shall apply to the respondent No.1., i.e. Torrent Power AEC Limited, for providing electricity connection to the

shops and flats constructed by it with a proper application/form/format and by paying charges within a week.

(4) The respondent No.1, i.e. Torrent Power AEC Limited, is directed to provide electricity connection to the shops and flats constructed by the petitioner within one month on usual terms and conditions.

(5) In case the Ahmedabad Municipal Corporation is not approached by the petitioner for obtaining Building Use Permission within the period stipulated in this order, the Ahmedabad Municipal Corporation shall inform the Torrent Power AEC Limited to disconnect the electricity supply made available to the shops and flats constructed by the petitioner and in such an eventuality, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to the shops and flats constructed by the petitioner within a period of fifteen days.

(6) In case the Ahmedabad Municipal Corporation does not grant Building Use Permission, it will ask the Torrent Power AEC Limited to

disconnect the electricity supply provided to the shops and flats constructed by the petitioner within a period of fifteen days and, thereupon, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to the shops and flats constructed by the petitioner.

(7) The petitioner shall file an Undertaking before the Torrent Power AEC Limited to the effect that in the event the Building Use Permission is not granted by the Ahmedabad Municipal Corporation, the petitioner will have no objection to disconnection of electricity supply provided to the shops and flats constructed by it. This Undertaking shall be filed along with the application/form/format meant for the purpose.

Rule is made absolute subject to above referred to directions. There shall be no order as to costs. Direct Service is permitted.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)